

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DEANNA J. MCLENEGAN

Claimant

VS.

WAL-MART

Respondent

AND

AMERICAN HOME ASSURANCE COMPANY

Insurance Carrier

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Docket No. 1,034,044

ORDER

Claimant appealed the June 14, 2007, preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes.

ISSUES

Claimant alleges she developed bilateral carpal tunnel syndrome due to the work she performed as a greeter for respondent. In the June 14, 2007, Order, Judge Barnes concluded claimant had failed to prove her upper extremity injuries arose out of and in the course of her employment. Consequently, the Judge denied claimant's request for workers compensation benefits.

Claimant contends Judge Barnes erred in finding the opinions of Dr. Donna St. Clair, whom respondent selected to examine claimant, were more persuasive than those of Dr. George G. Flutter, whom claimant selected to evaluate claimant for purposes of this claim. Claimant argues Dr. St. Clair's office notes contain an incomplete and erroneous history concerning claimant's carpal tunnel syndrome and, moreover, the doctor allegedly failed to review earlier medical notes and the results from nerve testing studies. In short, claimant contends she developed bilateral carpal tunnel syndrome from repetitively pushing and pulling shopping carts that she gave to shoppers as they entered respondent's store. Accordingly, claimant requests the Board to reverse the June 14, 2007, Order.

Respondent contends claimant failed to prove her work as a greeter caused her to develop bilateral carpal tunnel syndrome. In addition, respondent argues claimant's date of accident for these alleged repetitive trauma injuries is March 29, 2007, as dictated by K.S.A. 2006 Supp. 44-508(d). And, therefore, claimant's accident did not arise out of and in the

course of her employment with respondent because claimant was not working for respondent on that date. Consequently, respondent requests the Board to affirm the June 14, 2007, Order.

The issues before the Board on this appeal are:

1. Did claimant prove she injured her upper extremities in a series of repetitive traumas that arose out of and in the course of her employment with respondent?
2. What is the date of accident under K.S.A. 2006 Supp. 44-508(d)?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date and considering the parties' arguments, the undersigned Board Member finds and concludes the June 14, 2007, preliminary hearing Order should be affirmed.

Claimant is a long-term employee of respondent. During the last two years of her employment, claimant regularly worked approximately 28 to 30 hours per week as a greeter. Before becoming a greeter, claimant handled freight.

As a greeter, claimant meets customers as they come into respondent's store and she presents them with a shopping cart. Claimant initially testified she would hand customers a shopping cart every 30 seconds. She later, however, testified she did not really know if that 30-second interval was accurate.

On either March 3 or March 7, 2007, claimant took medical leave to address a bunion problem. At about the same time, claimant developed upper extremity symptoms. When those symptoms became intolerable, claimant consulted with her family physician, Dr. Tammie L. Nelson. The doctor's office notes from a March 14, 2007, visit indicate claimant had been experiencing upper extremity pain for about two weeks, which had started as a tingling sensation.

The patient is a 67-year-old female who has been experiencing some bilateral arm discomfort. She indicates that all of her fingers are involved on both hands. She has had pain now for the past couple of weeks which initially was described as a tingling but has progressed to a sharp pain which is of increasing severity. The pain will radiate up into her forearms. She has also had some neck pain on the left side. She denies any upper extremity weakness. She denies performing repetitive activities. . . .¹

¹ P.H. Trans., Cl. Ex. 2.

Claimant told Dr. Nelson that the upper extremity symptoms began at home and they had progressed to the point they were intolerable. The pain symptoms increased even during the period claimant was off work for her bunion problem. Claimant, who also has a heart condition, back problems, and lupus, denies performing any activities at home that were more physically demanding than handling the shopping carts at work.

Dr. Nelson referred claimant for nerve conduction studies, which were performed by Dr. Burtram J. Odenheimer. Those studies showed claimant had moderate-severe right carpal tunnel syndrome and moderate left carpal tunnel syndrome. Dr. Odenheimer told claimant that carpal tunnel syndrome could be caused by any repetitive work.

On March 29, 2007, claimant advised respondent she had been diagnosed with bilateral carpal tunnel syndrome that was related to her work, and that she was claiming workers compensation benefits. In response, respondent sent claimant to Dr. Donna St. Clair. The doctor examined claimant on March 29, 2007, and noted that claimant (1) had not sustained any recent trauma; (2) had been off work since March 7, 2007; (3) had experienced a flare-up in symptoms while at home; (4) had worked as a greeter for the last two years; (5) had not performed any repetitive, heavy lifting at work; (6) did not work with any vibratory machinery; and (7) had experienced multiple joint problems due to lupus. Thinking claimant's symptoms *began* at home while on medical leave and knowing that claimant worked for respondent as a greeter, Dr. St. Clair could not relate the bilateral carpal tunnel syndrome to claimant's work.

Claimant's attorney hired Dr. George G. Flutter to evaluate claimant for purposes of this claim. It appears Dr. Flutter examined claimant in early May 2007. The doctor took a history that claimant experienced pain in her wrists while pulling carts at work and that in early March 2007 she developed sharp pain in both wrists and hands. Dr. Flutter found claimant had bilateral hand and wrist pain, bilateral carpal tunnel syndrome, and probable bilateral ulnar neuropathy at the elbow. Moreover, the doctor concluded claimant's repetitive work caused or contributed to her condition.

Based upon the available information and to a reasonable degree of medical probability, there is a causal/contributory relationship between Ms. McLenegan's current condition and repetitive work-related activities. Ms. McLenegan reports that she has experienced symptoms related to pushing carts at work which she generally does throughout the work day.²

Based upon his evaluation, Dr. Flutter recommended a number of work restrictions, medications, and a referral to a hand surgeon.

² *Id.*, Cl. Ex. 1.

Judge Barnes was not persuaded that claimant's upper extremity injuries were related to her work as a greeter. Consequently, the Judge held claimant had failed to satisfy her burden of proof. Dr. Fluter links claimant's upper extremity problems to her work, but the doctor does not explain how rolling a shopping cart to a customer, which would appear to require minimal physical effort, would cause repetitive trauma to claimant's upper extremities. Although there may be a plausible relationship between claimant's work and her carpal tunnel syndrome, at this time the record lacks such proof. In addition, Dr. St. Clair could not link claimant's carpal tunnel syndrome to her work as a greeter.

This Board Member affirms Judge Barnes' finding that claimant has failed to prove her upper extremity condition is related to the work she performed for respondent. Accordingly, the June 14, 2007, Order should be affirmed.

Based upon the above conclusion, the issue of claimant's date of accident as dictated by K.S.A. 2006 Supp. 44-508(d) is moot.

By statute, preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.³ Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2006 Supp. 44-551(i)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.

WHEREFORE, the undersigned Board Member affirms the June 14, 2007, Order entered by Judge Barnes.

IT IS SO ORDERED.

Dated this ____ day of August, 2007.

BOARD MEMBER

c: Michael Snider, Attorney for Claimant
D. Steven Marsh, Attorney for Respondent and its Insurance Carrier
Nelsonna Potts Barnes, Administrative Law Judge

³ K.S.A. 44-534a.